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DATE: March 18, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of  
Antidumping Duty Administrative Review: Low-Enriched  
Uranium from France: 2012-2013

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## SUMMARY

In response to a request from USEC Inc. and United Enrichment Corporation (collectively, USEC) the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on low-enriched uranium (LEU) from France. The review covers Eurodif S.A., AREVA NC, and AREVA NC, Inc. (collectively AREVA) for the period of review (POR) February 1, 2012, through January 31, 2013. As we currently have no evidence of any shipments of subject merchandise, we are issuing a preliminary no shipment determination.

## BACKGROUND

In response to the Department's initial questionnaire, AREVA submitted a claim that it had no shipments of subject merchandise during the POR.<sup>1</sup> However, the Department's customs data query showed entries of LEU from AREVA during the POR.<sup>2</sup> In response to a questionnaire sent by the Department, AREVA submitted information to show that these entries were outside the scope of the order.<sup>3</sup>

During the course of this review irregularities were discovered in the importer and end-user certifications, which are required for re-exports to be considered excluded from the scope of the

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<sup>1</sup> See letter from AREVA to the Department titled, "Low Enriched Uranium from France: Statement of No Sales or Shipments," dated May 22, 2013.

<sup>2</sup> See Memorandum to the File, from Milton Koch, "Low Enriched Uranium from France: U.S. Customs and Border Protection data (CBP Data)," May 31, 2013.

<sup>3</sup> See letter from AREVA to the Department titled "Low Enriched Uranium from France: Further Response to July, 10, 2013 Supplemental Questionnaire," dated August 12, 2013.



order. For certain entries AREVA misidentified the foreign utility end-user in its end-user certifications.<sup>4</sup> AREVA further reported that certain end-user certificates were not presented to U.S. Customs and Border Protection (CBP) at time of entry as required, and only prepared in response to the Department's request.<sup>5</sup> The Department preliminarily determines that these entries were eligible for the scope exclusion as they were re-exported within 18 months.

## **SCOPE OF THE ORDER**

The product covered by the order is all low-enriched uranium. Low-enriched uranium is enriched uranium hexafluoride (UF<sub>6</sub>) with a U<sup>235</sup> product assay of less than 20 percent that has not been converted into another chemical form, such as UO<sub>2</sub>, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including low-enriched uranium produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of the order. Specifically, the order does not cover enriched uranium hexafluoride with a U<sup>235</sup> assay of 20 percent or greater, also known as highly-enriched uranium. In addition, fabricated low-enriched uranium is not covered by the scope of the order. For purposes of the order, fabricated uranium is defined as enriched uranium dioxide (UO<sub>2</sub>), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U<sub>3</sub>O<sub>8</sub>) with a U<sup>235</sup> concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U<sup>235</sup> concentration of no greater than 0.711 percent are not covered by the scope of the order.

Also excluded from the order is low-enriched uranium owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO<sub>2</sub>) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported low-enriched uranium (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the low-enriched uranium for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive.

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<sup>4</sup> See "Low Enriched Uranium from France: Response to September 18, 2013 Supplemental Questionnaire," dated October 22, 2013.

<sup>5</sup> See Memorandum to the File, "Low Enriched Uranium from France: Ex-Parte Meeting with Areva SA," dated November 5, 2013.

## **PRELIMINARY DETERMINATION OF NO SHIPMENTS**

Based on the information collected from CBP and information submitted by AREVA, the Department preliminarily determines that AREVA had no shipments of subject merchandise during the POR.

## **PRELIMINARY DETERMINATION OF REVISED ENTRY REQUIREMENTS**

Based upon the evidence on the record of this review, the Department preliminarily determines that the entries examined are entries of non-subject merchandise. Notwithstanding this preliminary determination, the Department also identified significant problems associated with the filing of the required certifications for re-exportation. The Department considers these certifications to be a crucial element for enforcement purposes that is necessary to ensure the remedial function of the AD order is served. Given the problems identified on the record of this review, the Department intends to strengthen the enforcement mechanism. Accordingly, for all future entries of LEU from France produced and/or exported by AREVA, which are entered under the re-export provision of the scope, the Department will require such entries to be classified as antidumping entries subject to suspension of liquidation and an AD duty cash deposit rate of zero. If no review is requested, the entries will be liquidated as entered. If a review is requested, the Department will review the entries to determine whether they met the terms of the scope exclusion. For those sales that meet the terms of the re-export exclusion, the Department will, in the final results, instruct CBP to liquidate as entered. For entries which do not meet the exclusion requirements, the Department will perform a dumping analysis and instruct CBP to liquidate in accordance with the results of the review. This change will be effective with the publication of the final results of this review. We invite interested parties to comment on this issue.

## RECOMMENDATION

We recommend adopting the above determination of no shipments for these preliminary results. In addition, we recommend not rescinding the review but, rather, completing this review and issuing appropriate instructions to CBP based on the final results of this review.<sup>6</sup> Further, we recommend initiating the suspension of liquidation for shipments from AREVA where the importer claims an exclusion from the scope of the order based on re-export of the LEU.

Agree ☒ Disagree ☐

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

18 MARCH 2014  
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Date

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<sup>6</sup> See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke the Order (in Part); 2011-2012, 78 FR 15686 (March 12, 2013) and the accompanying Decision Memorandum at 7 to 8.